

[COMMITTEE PRINT]

[SHOWING THE TEXT OF THE BILL AS FORWARDED BY THE SUBCOMMITTEE
ON HEALTH ON APRIL 9, 2008]

110TH CONGRESS
2D SESSION

H. R. 5613

To extend certain moratoria and impose additional moratoria on certain
Medicaid regulations through April 1, 2009.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2008

Mr. DINGELL (for himself and Mr. TIM MURPHY of Pennsylvania) introduced
the following bill; which was referred to the Committee on Energy and
Commerce

A BILL

To extend certain moratoria and impose additional moratoria
on certain Medicaid regulations through April 1, 2009.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting the Med-
5 icaid Safety Net Act of 2008”.

1 **SEC. 2. MORATORIA ON CERTAIN MEDICAID REGULATIONS.**

2 (a) EXTENSION OF CERTAIN MORATORIA IN PUBLIC
3 LAW 110–28.—Section 7002(a)(1) of the U.S. Troop
4 Readiness, Veterans’ Care, Katrina Recovery, and Iraq
5 Accountability Appropriations Act, 2007 (Public Law
6 110–28) is amended—

7 (1) by striking “prior to the date that is 1 year
8 after the date of enactment of this Act” and insert-
9 ing “prior to April 1, 2009”;

10 (2) in subparagraph (A), by inserting after
11 “Federal Regulations)” the following: “or in the
12 final regulation, relating to such parts, published on
13 May 29, 2007 (72 Federal Register 29748)”; and

14 (3) in subparagraph (C), by adding at the end
15 the following: “, including the proposed regulation
16 published on May 23, 2007 (72 Federal Register
17 28930)”.

18 (b) EXTENSION OF CERTAIN MORATORIA IN PUBLIC
19 LAW 110–173.—Section 206 of the Medicare, Medicaid,
20 and SCHIP Extension Act of 2007 (Public Law 110–173)
21 is amended—

22 (1) by striking “June 30, 2008” and inserting
23 “April 1, 2009”;

24 (2) by inserting “, including the proposed regu-
25 lation published on August 13, 2007 (72 Federal

1 Register 45201),” after “rehabilitation services”;
2 and

3 (3) by inserting “, including the final regulation
4 published on December 28, 2007 (72 Federal Reg-
5 ister 73635),” after “school-based transportation”.

6 (c) ADDITIONAL MORATORIA.—

7 (1) IN GENERAL.—Notwithstanding any other
8 provision of law, the Secretary of Health and
9 Human Services shall not, prior to April 1, 2009,
10 take any action (through promulgation of regulation,
11 issuance of regulatory guidance, use of Federal pay-
12 ment audit procedures, or other administrative ac-
13 tion, policy, or practice, including a Medical Assist-
14 ance Manual transmittal or letter to State Medicaid
15 directors) to impose any restrictions relating to a
16 provision described in subparagraph (A), (B), or (C)
17 of paragraph (2) if such restrictions are more re-
18 strictive in any aspect than those applied to the re-
19 spective provision as of the date specified in para-
20 graph (3) for such provision.

21 (2) PROVISIONS DESCRIBED.—

22 (A) PORTION OF INTERIM FINAL REGULA-
23 TION RELATING TO MEDICAID TREATMENT OF
24 OPTIONAL CASE MANAGEMENT SERVICES.—

1 (i) IN GENERAL.—Subject to clause
2 (ii), the provision described in this sub-
3 paragraph is the interim final regulation
4 relating to optional State plan case man-
5 agement services under the Medicaid pro-
6 gram published on December 4, 2007 (72
7 Federal Register 68077) in its entirety.

8 (ii) EXCEPTION.—The provision de-
9 scribed in this subparagraph does not in-
10 clude the portion of such regulation as re-
11 lates directly to implementing section
12 1915(g)(2)(A)(ii) of the Social Security
13 Act, as amended by section 6052 of the
14 Deficit Reduction Act of 2005 (Public Law
15 109–171), through the definition of case
16 management services and targeted case
17 management services contained in pro-
18 posed section 440.169 of title 42, Code of
19 Federal Regulations, but only to the extent
20 that such portion is not more restrictive
21 than the policies set forth in the Dear
22 State Medicaid Director letter on case
23 management issued on January 19, 2001
24 (SMDL #01–013), and with respect to
25 community transition case management,

1 the Dear State Medicaid Director letter
2 issued on July 25, 2000 (Olmstead Update
3 3).

4 (B) PROPOSED REGULATION RELATING TO
5 REDEFINITION OF MEDICAID OUTPATIENT HOS-
6 PITAL SERVICES.—The provision described in
7 this subparagraph is the proposed regulation re-
8 lating to clarification of outpatient clinic and
9 hospital facility services definition and upper
10 payment limit under the Medicaid program
11 published on September 28, 2007 (72 Federal
12 Register 55158) in its entirety.

13 (C) PORTION OF PROPOSED REGULATION
14 RELATING TO MEDICAID ALLOWABLE PROVIDER
15 TAXES.—

16 (i) IN GENERAL.—Subject to clause
17 (ii), the provision described in this sub-
18 paragraph is the final regulation relating
19 to health-care-related taxes under the Med-
20 icaid program published on February 22,
21 2008 (73 Federal Register 9685) in its en-
22 tirety.

23 (ii) EXCEPTION.—The provision de-
24 scribed in this subparagraph does not in-

1 clude the portions of such regulation as re-
2 late to the following:

3 (I) REDUCTION IN THRESH-
4 OLD.—The reduction from 6 percent
5 to 5.5 percent in the threshold applied
6 under section 433.68(f)(3)(i) of title
7 42, Code of Federal Regulations, for
8 determining whether or not there is
9 an indirect guarantee to hold a tax-
10 payer harmless, as required to carry
11 out section 1903(w)(4)(C)(ii) of the
12 Social Security Act, as added by sec-
13 tion 403 of the Medicare Improvement
14 and Extension Act of 2006 (division
15 B of Public Law 109–432).

16 (II) CHANGE IN DEFINITION OF
17 MANAGED CARE.—The change in the
18 definition of managed care as pro-
19 posed in the revision of section
20 433.56(a)(8) of title 42, Code of Fed-
21 eral Regulations, as required to carry
22 out section 1903(w)(7)(A)(viii) of the
23 Social Security Act, as amended by
24 section 6051 of the Deficit Reduction
25 Act of 2005 (Public Law 109–171).

1 (3) DATE SPECIFIED.—The date specified in
2 this paragraph for the provision described in—

3 (A) subparagraph (A) of paragraph (2) is
4 December 3, 2007;

5 (B) subparagraph (B) of such paragraph is
6 September 27, 2007; or

7 (C) subparagraph (C) of such paragraph is
8 February 21, 2008.

9 **SEC. 3. FUNDS TO REDUCE MEDICAID FRAUD AND ABUSE.**

10 (a) IN GENERAL.—For purposes of reducing fraud
11 and abuse in the Medicaid program under title XIX of
12 the Social Security Act, there is appropriated to the Sec-
13 retary of Health and Human Services, out of any money
14 in the Treasury not otherwise appropriated, \$25,000,000,
15 for each fiscal year (beginning with fiscal year 2009).
16 Amounts appropriated under this section shall remain
17 available for expenditure until expended and shall be in
18 addition to any other amounts appropriated or made avail-
19 able to the Secretary for such purposes with respect to
20 the Medicaid program.

21 (b) ANNUAL REPORT.—Not later than September 30
22 of 2009 and of each subsequent year, the Secretary of
23 Health and Human Services shall submit to the Com-
24 mittee on Energy and Commerce of the House of Rep-
25 resentatives and the Committee on Finance of the Senate

1 a report on the activities (and the results of such activi-
2 ties) funded under subsection (a) to reduce waste, fraud,
3 and abuse in the Medicaid program under title XIX of
4 the Social Security Act during the previous 12 month pe-
5 riod, including the amount of funds appropriated under
6 such subsection (a) for each such activity and an estimate
7 of the savings to the Medicaid program resulting from
8 each such activity.

9 **SEC. 4. STUDY AND REPORTS TO CONGRESS.**

10 (a) SECRETARIAL REPORT IDENTIFYING PROB-
11 LEMS.—Not later than July 1, 2008, the Secretary of
12 Health and Human Services shall submit to the Com-
13 mittee on Energy and Commerce of the House of Rep-
14 resentatives and the Committee on Finance of the Senate
15 a report that—

16 (1) outlines the specific problems the Medicaid
17 regulations referred to in the amendments made by
18 subsections (a) and (b) of section 2 and in the provi-
19 sions described in subsection (c)(2) of such section
20 were intended to address;

21 (2) detailing how these regulations were de-
22 signed to address these specific problems; and

23 (3) cites the legal authority for such regula-
24 tions.

1 (b) INDEPENDENT COMPREHENSIVE STUDY AND RE-
2 PORT.—

3 (1) IN GENERAL.—Not later than July 1, 2008,
4 the Secretary of Health and Human Services shall
5 enter into a contract with an independent organiza-
6 tion for the purpose of—

7 (A) producing a comprehensive report on
8 the prevalence of the problems outlined in the
9 report submitted under subsection (a);

10 (B) identifying strategies in existence to
11 address these problems; and

12 (C) assessing the impact of each regulation
13 referred to in such subsection on each State
14 and the District of Columbia.

15 (2) DEADLINE.—The report under paragraph
16 (1) shall be submitted to the Committee on Energy
17 and Commerce of the House of Representatives and
18 the Committee on Finance of the Senate not later
19 than March 1, 2009.

20 (3) COOPERATION OF STATES.—If the Sec-
21 retary of Health and Human Services determines
22 that a State or the District of Columbia has not co-
23 operated with the independent organization for pur-
24 poses of the report under this subsection, the Sec-
25 retary shall reduce the amount paid to the State or

1 District under section 1903(a) of the Social Security
2 Act (42 U.S.C. 1396b(a)) by \$25,000 for each day
3 on which the Secretary determines such State or
4 District has not so cooperated. Such reduction shall
5 be made through a process that permits the State or
6 District to challenge the Secretary's determination.

7 (c) FUNDING.—

8 (1) IN GENERAL.—Out of any money in the
9 Treasury of the United States not otherwise appro-
10 priated, there are appropriated to the Secretary
11 without further appropriation, \$5,000,000 to carry
12 out this section.

13 (2) AVAILABILITY; AMOUNTS IN ADDITION TO
14 OTHER AMOUNTS APPROPRIATED FOR SUCH ACTIVI-
15 TIES.—Amounts appropriated pursuant to para-
16 graph (1) shall—

17 (A) remain available until expended; and

18 (B) be in addition to any other amounts
19 appropriated or made available to the Secretary
20 of Health and Human Services with respect to
21 the Medicaid program.

1 **SEC. 5. ASSET VERIFICATION THROUGH ACCESS TO INFOR-**
2 **MATION HELD BY FINANCIAL INSTITUTIONS.**

3 (a) ADDITION OF AUTHORITY.—Title XIX of the So-
4 cial Security Act is amended by inserting after section
5 1939 the following new section:

6 “ASSET VERIFICATION THROUGH ACCESS TO
7 INFORMATION HELD BY FINANCIAL INSTITUTIONS

8 “SEC. 1940. (a) IMPLEMENTATION.—

9 “(1) IN GENERAL.—Subject to the provisions of
10 this section, each State shall implement an asset
11 verification program described in subsection (b), for
12 purposes of determining or redetermining the eligi-
13 bility of an individual for medical assistance under
14 the State plan under this title.

15 “(2) PLAN SUBMITTAL.—In order to meet the
16 requirement of paragraph (1), each State shall—

17 “(A) submit not later than a deadline spec-
18 ified by the Secretary consistent with paragraph
19 (3), a State plan amendment under this title
20 that describes how the State intends to imple-
21 ment the asset verification program; and

22 “(B) provide for implementation of such
23 program for eligibility determinations and rede-
24 terminations made on or after 6 months after
25 the deadline established for submittal of such
26 plan amendment.

1 “(3) PHASE-IN.—

2 “(A) IN GENERAL.—

3 “(i) IMPLEMENTATION IN CURRENT
4 ASSET VERIFICATION DEMO STATES.—The
5 Secretary shall require those States speci-
6 fied in subparagraph (C) (to which an
7 asset verification program has been applied
8 before the date of the enactment of this
9 section) to implement an asset verification
10 program under this subsection by the end
11 of fiscal year 2009.

12 “(ii) IMPLEMENTATION IN OTHER
13 STATES.—The Secretary shall require
14 other States to submit and implement an
15 asset verification program under this sub-
16 section in such manner as is designed to
17 result in the application of such programs,
18 in the aggregate for all such other States,
19 to enrollment of the following percentage
20 of enrollees, in the aggregate for all such
21 other States, by the end of the fiscal year
22 involved:

23 “(I) 12.5 percent by the end of
24 fiscal year 2009.

1 “(II) 25 percent by the end of
2 fiscal year 2010.

3 “(III) 50 percent by the end of
4 fiscal year 2011.

5 “(IV) 75 percent by the end of
6 fiscal year 2012.

7 “(V) 100 percent by the end of
8 fiscal year 2013.

9 “(B) CONSIDERATION.—In selecting States
10 under subparagraph (A)(ii), the Secretary shall
11 consult with the States involved and take into
12 account the feasibility of implementing asset
13 verification programs in each such State.

14 “(C) STATES SPECIFIED.—The States
15 specified in this subparagraph are California,
16 New York, and New Jersey.

17 “(D) CONSTRUCTION.—Nothing in sub-
18 paragraph (A)(ii) shall be construed as pre-
19 venting a State from requesting, and the Sec-
20 retary approving, the implementation of an
21 asset verification program in advance of the
22 deadline otherwise established under such sub-
23 paragraph.

1 “(4) EXEMPTION OF TERRITORIES.—This sec-
2 tion shall only apply to the 50 States and the Dis-
3 trict of Columbia.

4 “(b) ASSET VERIFICATION PROGRAM.—

5 “(1) IN GENERAL.—For purposes of this sec-
6 tion, an asset verification program means a program
7 described in paragraph (2) under which a State—

8 “(A) requires each applicant for, or recipi-
9 ent of, medical assistance under the State plan
10 under this title on the basis of being aged,
11 blind, or disabled to provide authorization by
12 such applicant or recipient (and any other per-
13 son whose resources are material to the deter-
14 mination of the eligibility of the applicant or re-
15 cipient for such assistance) for the State to ob-
16 tain (subject to the cost reimbursement require-
17 ments of section 1115(a) of the Right to Finan-
18 cial Privacy Act but at no cost to the applicant
19 or recipient) from any financial institution
20 (within the meaning of section 1101(1) of such
21 Act) any financial record (within the meaning
22 of section 1101(2) of such Act) held by the in-
23 stitution with respect to the applicant or recipi-
24 ent (and such other person, as applicable),
25 whenever the State determines the record is

1 needed in connection with a determination with
2 respect to such eligibility for (or the amount or
3 extent of) such medical assistance; and

4 “(B) uses the authorization provided under
5 subparagraph (A) to verify the financial re-
6 sources of such applicant or recipient (and such
7 other person, as applicable), in order to deter-
8 mine or redetermine the eligibility of such appli-
9 cant or recipient for medical assistance under
10 the State plan.

11 “(2) PROGRAM DESCRIBED.—A program de-
12 scribed in this paragraph is a program for verifying
13 individual assets in a manner consistent with the ap-
14 proach used by the Commissioner of Social Security
15 under section 1631(e)(1)(B)(ii).

16 “(c) DURATION OF AUTHORIZATION.—Notwith-
17 standing section 1104(a)(1) of the Right to Financial Pri-
18 vacy Act, an authorization provided to a State under sub-
19 section (b)(1) shall remain effective until the earliest of—

20 “(1) the rendering of a final adverse decision on
21 the applicant’s application for medical assistance
22 under the State’s plan under this title;

23 “(2) the cessation of the recipient’s eligibility
24 for such medical assistance; or

1 “(3) the express revocation by the applicant or
2 recipient (or such other person described in sub-
3 section (b)(1), as applicable) of the authorization, in
4 a written notification to the State.

5 “(d) TREATMENT OF RIGHT TO FINANCIAL PRIVACY
6 ACT REQUIREMENTS.—

7 “(1) An authorization obtained by the State
8 under subsection (b)(1) shall be considered to meet
9 the requirements of the Right to Financial Privacy
10 Act for purposes of section 1103(a) of such Act, and
11 need not be furnished to the financial institution,
12 notwithstanding section 1104(a) of such Act.

13 “(2) The certification requirements of section
14 1103(b) of the Right to Financial Privacy Act shall
15 not apply to requests by the State pursuant to an
16 authorization provided under subsection (b)(1).

17 “(3) A request by the State pursuant to an au-
18 thorization provided under subsection (b)(1) is
19 deemed to meet the requirements of section
20 1104(a)(3) of the Right to Financial Privacy Act
21 and of section 1102 of such Act, relating to a rea-
22 sonable description of financial records.

23 “(e) REQUIRED DISCLOSURE.—The State shall in-
24 form any person who provides authorization pursuant to

1 subsection (b)(1)(A) of the duration and scope of the au-
2 thorization.

3 “(f) REFUSAL OR REVOCATION OF AUTHORIZA-
4 TION.—If an applicant for, or recipient of, medical assist-
5 ance under the State plan under this title (or such other
6 person described in subsection (b)(1), as applicable) re-
7 fuses to provide, or revokes, any authorization made by
8 the applicant or recipient (or such other person, as appli-
9 cable) under subsection (b)(1)(A) for the State to obtain
10 from any financial institution any financial record, the
11 State may, on that basis, determine that the applicant or
12 recipient is ineligible for medical assistance.

13 “(g) USE OF CONTRACTOR.—For purposes of imple-
14 menting an asset verification program under this section,
15 a State may select and enter into a contract with a public
16 or private entity meeting such criteria and qualifications
17 as the State determines appropriate. In carrying out ac-
18 tivities under such contract, such an entity shall be subject
19 to the same requirements and limitations on use and dis-
20 closure of information as would apply if the State were
21 to carry out such activities directly.

22 “(h) TECHNICAL ASSISTANCE.—The Secretary shall
23 provide States with technical assistance to aid in imple-
24 mentation of an asset verification program under this sec-
25 tion.

1 “(i) REPORTS.—A State implementing an asset
2 verification program under this section shall furnish to the
3 Secretary such reports concerning the program, at such
4 times, in such format, and containing such information
5 as the Secretary determines appropriate.

6 “(j) TREATMENT OF PROGRAM EXPENSES.—Not-
7 withstanding any other provision of law, reasonable ex-
8 penses of States in carrying out the program under this
9 section shall be treated, for purposes of section 1903(a),
10 in the same manner as State expenditures specified in
11 paragraph (7) of such section.”.

12 (b) STATE PLAN REQUIREMENTS.—Section 1902(a)
13 of such Act (42 U.S.C. 1396a(a)) is amended—

14 (1) in paragraph (69) by striking “and” at the
15 end;

16 (2) in paragraph (70) by striking the period at
17 the end and inserting “; and”; and

18 (3) by inserting after paragraph (70), as so
19 amended, the following new paragraph:

20 “(71) provide that the State will implement an
21 asset verification program as required under section
22 1940.”.

23 (c) WITHHOLDING OF FEDERAL MATCHING PAY-
24 MENTS FOR NONCOMPLIANT STATES.—Section 1903(i) of
25 such Act (42 U.S.C. 1396b(i)) is amended—

1 (1) in paragraph (22) by striking “or” at the
2 end;

3 (2) in paragraph (23) by striking the period at
4 the end and inserting “; or”; and

5 (3) by adding after paragraph (23) the fol-
6 lowing new paragraph:

7 “(24) if a State is required to implement an
8 asset verification program under section 1940 and
9 fails to implement such program in accordance with
10 such section, with respect to amounts expended by
11 such State for medical assistance for individuals
12 subject to asset verification under such section, un-
13 less—

14 “(A) the State demonstrates to the Sec-
15 retary’s satisfaction that the State made a good
16 faith effort to comply;

17 “(B) not later than 60 days after the date
18 of a finding that the State is in noncompliance,
19 the State submits to the Secretary (and the
20 Secretary approves) a corrective action plan to
21 remedy such noncompliance; and

22 “(C) not later than 12 months after the
23 date of such submission (and approval), the
24 State fulfills the terms of such corrective action
25 plan.”.

1 (d) REPEAL.—Section 4 of Public Law 110–90 is re-
2 pealed.

3 **SEC. 6. ADJUSTMENT TO PAQI FUND.**

4 Section 1848(l)(2) of the Social Security Act (42
5 U.S.C. 1395w-4(l)(2)), as amended by section 101(a)(2)
6 of the Medicare, Medicaid, and SCHIP Extension Act of
7 2007 (Public Law 110-173), is amended—

8 (1) in subparagraph (A)(i)—

9 (A) in subclause (III), by striking
10 “\$4,960,000,000” and inserting
11 “\$3,790,000,000”; and

12 (B) by adding at the end the following new
13 subclause:

14 “(IV) For expenditures during
15 2014, an amount equal to
16 \$3,690,000,000.”;

17 (2) in subparagraph (A)(ii), by adding at the
18 end the following new subclause:

19 “(IV) 2014.—The amount avail-
20 able for expenditures during 2014
21 shall only be available for an adjust-
22 ment to the update of the conversion
23 factor under subsection (d) for that
24 year.”; and

25 (3) in subparagraph (B)—

21

1 (A) in clause (ii), by striking “and” at the
2 end;

3 (B) in clause (iii), by striking the period at
4 the end and inserting “; and”; and

5 (C) by adding at the end the following new
6 clause:

7 “(iv) 2014 for payment with respect
8 to physicians’ services furnished during
9 2014.”.